(18)

No. 387

Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, AND RICHARD SIMKINS AND GEORGE FLORENCE, RECEIVERS,

Cross-Petitioners,

vs.

CRITES, INCORPORATED,

Respondents.

CROSS-PETITION FOR WRIT OF CERTIORARI.

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OCTOBER TERM, A. D. 1943.

No. 317.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, AND RICHARD SIMKINS AND GEORGE FLORENCE, RECEIVERS,

Cross-Petitioners,

vs.

CRITES, INCORPORATED,

Respondents.

CROSS-PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

The petition of Richard Simkins and George Florence, receivers, respectfully show to this Honorable Court, first:

A.

STATEMENT OF FACTS.

In 1932 the Prudential Insurance Company of America brought foreclosure proceedings against Henry M. Crites, and his wife, and asked for the appointment of receivers to care for the rents and profits.

Immediately prior to this foreclosure action, Henry M. Crites and his wife assigned all their right, title and interest in the property in question to Crites, Inc., a corporation organized for that purpose. Richard Simkins and George Florence were appointed receivers of rents and profits by the court and Davis Harrison and O. C. Ingalls were appointed as counsel for the receivers.

In April, 1934, the receivers filed their accounts with the court. In 1937 Crites, Inc., excepted to the receivers' accounts, complaining only of the conduct of receiver Simkins and the allowance of fees to receivers and to the attorney for the receivers, O. C. Ingalls, on the ground that the substantial amount of fees Ingalls requested was for the defending the receivers' accounts.

The matter was referred to a master who recommended that the receivers' accounts be approved, as amended. The District Court sustained the master, overruled the exceptions, and approved the receivers' accounts.

Thereafter, O. C. Ingalls, one of the attorneys for the receivers, filed an application for additional attorney's fees for services rendered to the receivers up to May, 1939, and after a hearing, contested by Crites, Inc., alone, was allowed twenty-two hundred ($2200.00) dollars by the District Court. Davis Harrison asked for no additional fees.

Defendant, Crites, Inc., appealed the matter which was then reviewed by the Circuit Court of Appeals, who sustained the lower court but amended its decision by directing that Harrison and Ingalls be allowed only two hundred fifty ($250.00) dollars as attorneys' fees, and their expenses, but denied any further compensation whatsoever because of the so-called dual allegiance and fee-splitting arrangement.

Petition for rehearing was denied.

B.

QUESTION PRESENTED AND REASON FOR ALLOWANCE OF WRIT.

1—Your receivers further state that the Circuit Court of Appeals of the Sixth Circuit has decided an important question of federal law, which has not, but which should be settled by this court, which question is where there is no conflicting loyalty, no divided allegiance and no fraud of any kind in an equity case, should the counsel be barred from fees rightfully and honestly earned because of an agreement between forwarder and receiver to divide the fee for bringing the action, permissible under Section 34, Canon of Ethics, American Bar Association? The only agreement on record as to the splitting of fees was between Ingalls and Simkins and that came about through the relationship of forwarder and receivers of the business.

Your receivers allege that there was no splitting of fees of any kind nor any attempt to split fees arising out of the trust estate. That Ingalls at no time was disloyal to his trust, the receivership, nor was Harrison. That the case

relied upon by the Circuit Court of Appeals was a bankruptcy case where an entirely different rule applies.

2—The Circuit Court of Appeals has decided an important question upon erroneous facts not found in the record and it has so far departed from the accepted and usual course of judicial facts found in the record so as to call for an exercise of this court's power of supervision.

3—Your receivers state that the Circuit Court of Appeals either failed to read the record or deliberately ignored the evidence therein, relying entirely upon appellant's brief because:

(a) The Circuit Court of Appeals say in their opinion that there was no order authorizing the appointment of attorneys appearing of record.

However, that order does appear in the record.

(b) The court found an agreement between Harrison, Simkins and Ingalls to pool their fees and divide them equally, which fact is refuted by the record.

(c) The court says in its opinion that the master found fee-splitting reprehensible, which does not appear in the record.

(d) The court further found the status of Ingalls and Harrison an anomalous one, and that there was divided allegiance. That Ingalls and Harrison had found themselves required to file objections to the accounts of the receivers, their clients, which finding is absolutely untrue, and is not borne out by the record.